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INTERIM GUIDELINES FOR LOBBYIST AND PRINCIPALS UNDER THE PROVISIONS OF INITIATIVE # 85

Approved by the Voters of Montana

November 4, 1980

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INITIATIVE 85

THE MONTANA LOBBYIST DISCLOSURE ACT OF 1980

INTRODUCTION

The Montana Lobbyist Disclosure Act of 1980, passed by Initiative 85, makes new provisions for the regulation and disclosure of information related to the decision-making process of government. Among its highlights:

- It requires registration of all legislative lobbyists who are working on behalf of another person or organization, if the lobbyist is paid a salary or other compensation for the lobbying. A \$10 fee is required and a license will be issued.
- requires the filing of periodic reports of expenditures by persons or organizations who expend \$1000 or more in a calendar year to compensate or reimburse a legislative lobbyist (exclusive of personal travel and living expenses);
- requires registration and reporting by certain persons and their employers who are engaged in attempting to influence the official action of certain public officials or bodies other than the legislature, if the salaries or expenses exceed \$1000;
- strengthens and supplements the present code provisions on undesirable or unethical lobbying practices;
- provides for the disclosure of personal business or economic interests by many elected public officials;
- provides for disclosure of lobbying expenditures made by government agencies themselves which attempt to influence legislative action;
- provides that registrations, reports, and disclosure statements filed under the Act shall be public information;
- places the primary responsibility for administration and enforcement of the Act with the Montana Commissioner of Political Practices;
- provides new penalties for violations;
- provides that an individual citizen lobbying on his own behalf incurs no obligations under the Act.

This publication of the Commissioner of Political Practices is intended to describe and explain, in a general way, the provisions of the Act. Its explanation follows the general trend of administrative rules which will be adopted pursuant to the Montana Administrative Procedure Act. Following are more detailed explanations of the Act's provisions.

LEGISLATIVE LOBBYISTS--REGISTRATION

WHO IS A "LOBBYIST"

The Montana Lobbyist Disclosure Act of 1980 defines "lobbyist," in a way that is not much different from prior law. A "lobbyist" [§5-7-102(4), (5), (6), MCA] is a person who attempts to influence the actions of the Legislature or its members, when he is working on behalf of another person or organization. This includes anyone who is paid or reimbursed for expenses as well as those paid a fee or salary.

Lobbyists are required to register their names, employers, and the primary subjects of their interests upon an official docket kept by the Commissioner of Political Practices. The same registration forms will be used that have been used in prior years, and the lobbyist's principal (see below) will be required to complete and return the same authorization form. A \$10 fee for registration will be imposed and deposited in the State general fund.

The Act does NOT apply to a person who acts solely on his own behalf, regardless of what he spends; so that a person who "lobbies" purely for himself and is not paid or reimbursed by another person or organization need not register.

WHO IS A "PRINCIPAL"

The Act (§5-7-102[8]) defines "principal" to be a person or other organization that employs or compensates another person to lobby. However, a principal incurs no real requirement under the Act unless he expends--through salaries, reimbursements for expenses, or other administrative costs of the lobbying effort--\$1000 or more in a calendar year.

Persons who are "principals" or who can reasonably anticipate expending \$1000 or more in a calendar year on lobbying costs or salaries should keep records of such salaries, fees and expenses. Since the effective date of the Act was November 20, 1980 nothing expended before that date need be considered.

Under certain circumstances, a principal may be required to register and report even if he employs no professional "lobbyist." This occurs in the case of "grass-roots" lobbying, for instance, communications directed at the general public or those affiliated with the principal which urge them to contact or persuade legislators. An effort of this kind, if its costs exceed \$1000, makes the communicator a "principal."

FILING OF REPORTS

The new Act requires that "principals" file periodic reports disclosing their legislative lobbying expenditures. In the event that a principal expends \$1000 or more during a calendar year on reportable lobbying, he must file a report before February 16th of any year that the Legislature is in session. The report must detail all expenditures (and, in certain cases, sources of funds used for lobbying) through February 1st of the legislative-session year. Such principals must also file a report within 60 days of the end of the Legislative session detailing any expenditures made during the session and not already reported on the February 16th report.

Monthly reports are required of any principal who expends a total of \$5000 or more during a calendar month on legislative lobbying. This report is due by the 16th of the following month.

If a principal who has already filed the required expenditure report for having spent \$1000 or more but has no reportable expenditures during the next given period (within 60 days after the end of the Legislative session), must file a report stating that there were no reportable expenditures for that period.

It is the duty of a lobbyist to record and transmit to his principal information regarding reportable lobbying expenditures (see "Contents of reports," below).

Forms are available and reports must be filed with the office of the Commissioner of Political Practices, Capitol Station, Helena, Montana 59620.

NON-LEGISLATIVE LOBBYING--REGISTRATION: REPORTING

In addition to the traditional application to legislative matters, the Act [§5-7-102(4)(b)] extends its definition of "lobbying" to include attempting to influence the decisions of certain other public officials and procedures. The types of proceedings covered are:

- any hearing conducted by any executive branch department of state government pursuant to the Montana Administrative Procedure Act, the purpose of which is to adopt, amend, or repeal administrative rules or grant or revoke a permit;
- any other state agency, when it is engaged in a formal proceeding the purpose of which is to set or modify rates or tariffs of a regulated industry, or to grant, modify or revoke a permit or franchise.

A non-legislative lobbyist is required to register, and a principal required to file reports (see below) for "non-legislative" lobbying only if the principal expends \$1000 or more in a calendar year on all such efforts. Salaries and fees of those paid to represent a principal count toward this figure, but personal travel and living expenses (even though reimbursed) of a lobbyist do not. However, if a principal (by reason of expending \$1000 or more in reportable expenses) is required to report, such travel and living expenses should be disclosed.*

Reports covering non-legislative lobbying must be filed by February 16th, and cover all reportable activities of the preceding year. A principal who expends \$5000 or more in a calendar month must file a report by the 15th of the following month detailing such expenditures.

Principals who are involved in both types of lobbying (legislative and non-legislative) must aggregate both types of expenditures to determine whether they have reached the \$1000 or \$5000 mark, and a single report may be filed which covers all types of reportable activity.

* Since the apparent effective date of the Act is November 20, 1980, no such activities occurring before that date need be considered.

LOBBYING DISCLOSURE BY GOVERNMENT AGENCIES

The Act requires disclosure of expenditures made by state government agencies to influence the actions of the Legislature, as it does of anyone else, if the \$1000 limit is exceeded. There are certain exceptions; for instance, a public official acting in his/her official capacity is not covered by this Act, but other personnel in the same department are required to register.

Other exceptions are made for activities of government agencies since many of their "lobbying" efforts are mandated by law. For instance, staff time or resources devoted to budget preparation, or response to any request of a house or committee of the Legislature, are exempted from the definition of lobbying payments. Also, expenses related to the following activities need not be reported:

- requests for appropriations by a state agency to the office of budget and program planning or requests by the office of budget and program planning on behalf of another agency;
- recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject (whether the request is made by the legislature, a committee or agency of the legislature, or an individual legislator);
- requests, recommendations, or other communications between or within state agencies or between or within local governmental agencies;
- any other official duty mandated by law, such as the governor's annual message to the Legislature.

With exceptions to the above, other efforts by state agencies to influence the actions of the Legislature are "lobbying" as defined, and the staff time and resources expended are lobbying expenses.

Each individual Department of the executive branch is a "principal" as defined (assuming that lobbying payments reach the threshold level). Each department must file a single report on the statutory dates which covers lobbying activities of all staff members.

CONTENTS OF REPORTS BY PRINCIPALS

If a principal, by reason of having expended monies in excess of the "allowable" amount, is required to file reports of lobbying expenses. These detailed requirements are set forth in section (11)(5) of the act, and essentially include the following categories:

- salaries, fees and expenses paid to lobbyists;
- cost of publications distributed to membership of a principal or to the public if the publication is primarily devoted to lobbying efforts or matters;
- political campaign contributions made by the principal or lobbyist;
- disclosure of contributions or membership fees paid to a principal, and of the names of paying members, if the membership fees or contributions aggregate \$250 or more from such member;
- in addition, such reports must list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, and a statement of the principal's position for or against the action.

ETHICAL STANDARDS

The Act adds to current provisions regarding the ethics of lobbying and other influences on governmental action. It furthermore applies these standards of conduct to many situations that may not, in fact, be covered by other provisions of the Act (for instance, most proceedings under the Administrative Procedure Act). Prohibited conduct includes:

- instigating action by any public official for the purpose of obtaining employment;
- attempting to influence the decision of any public official by means of promising financial or political support, or campaign contributions;
- making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, any principal, or legislator;
- threatening any economic reprisal or other unlawful retaliation against any public official;
- lobbying on a contingency-fee basis;
- knowingly misrepresenting facts to a legislator with regard to an official matter;
- attempting to influence the decision or vote of a hearing examiner or other quasi-judicial officer acting under the Administrative Procedure Act.

PENALTIES

Under the Act, persons who fail to register, report as required or make false statements in any report or other document may be subject to a general misdemeanor penalty, the crime of unsworn falsification to authorities, or civil penalties of up to \$7500 per violation. Lobbyists violating ethical standards may have their licenses revoked. Public officials who fail to file the statements of economic interests provided for may be subject to recall as well as common-law remedies which would prevent their continuance in office. Enforcement agencies, in addition to the Commissioner of Political Practices, include the Attorney General and the County Attorney of a county in which a violation takes place.

L O B B Y I S T D I S C L O S U R E

Part 1

Licenses

Section 1. 5-7-101. Purposes of chapter. (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business interests, and to require disclosure of the amounts of money spent for lobbying.

(2) Nothing in this chapter subjects any Montana citizen lobbying on his/her own behalf to any reporting requirements nor deprives any such citizen of the constitutional right to communicate with public officials.

Section 2. 5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision thereof, or other organization or group of persons.

(3) "Public official" means any individual, elected or appointed, acting in his official capacity for the state or local government or any political subdivision thereof, but does not include those acting in a judicial or quasi-judicial capacity.

(4) "Lobbying" includes:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity; and

(b) the practice of promoting or opposing official action by any public official in the event the person engaged in such practice expends \$1,000 per calendar year or more exclusive of personal travel and living expenses.

(5) (a) "Lobbyist" means any person who engages in the practice of lobbying for hire.

(b) "Lobbyist" does not include:

(i) any individual Montana citizen acting solely on his/her own behalf; or

(ii) any individual working for the same principal as a licensed lobbyist, such individual having no personal contact with any public official on behalf of his/her principal.

(c) Nothing in this section deprives any citizen not lobbying for hire of the constitutional right to communicate with public officials.

(6) "Lobbying for hire" includes activities of any officers, agents, attorneys, or employees of any principal who are paid, reimbursed or retained by such principal and whose duties include lobbying. When an individual is reimbursed only for his personal living and travel expenses, which together do not exceed \$1,000 per calendar year, that individual shall not be considered to be lobbying for hire.

(7) "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

(b) instigating action by any public official for the purpose of obtaining employment in opposition thereto;

(c) attempting to influence the action of any public official on any measure pending or to be proposed by:

(i) the promise of support or opposition at any future election;

(ii) promise of financial support;

(iii) making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, any principal, or any legislator;

(iv) any improper economic reprisal or other unlawful retaliation against any public official; or

(v) any means other than argument on the merits thereof.

(d) attempting to influence a decision or vote by a hearing examiner or quasi-judicial officer in any contested case proceeding under Part 6, Chapter 4, Title 2, MCA except as provided therein;

(e) attempting to knowingly deceive any public official with regard to the pertinent facts of an official matter or attempt to knowingly misrepresent pertinent facts of an official matter to any public official; or

(f) engaging in practices which reflect discredit on the practice of lobbying.

(8) "Principal" means any person who makes payments in excess of \$1,000 per calendar year for any of the following:

(a) to engage a lobbyist; or

(b) in the case of a person other than an individual, to solicit, directly, indirectly or by an advertising campaign, the lobbying efforts of another person.

(9) "Docket" means the register and reports of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, as salary, fee, or compensation for expenses or for any other purpose;

(b) payment in support of or assistance to a lobbyist or lobbying activities, including, but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means any holding or interest whose fair market value is greater than \$1,000, in any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed individual, holding company, joint stock company, receivership, trust or other entity or property held in anticipation of profit, but does not include non-profit organizations.

(13) "Commissioner" means the commissioner of campaign finances and practices, created by 13-37-102, renamed in [Section 19] the commissioner of political practices.

(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including, but not limited to legislators, public service commissioners and district court judges. The term "official-elect" shall also apply only to such offices.

Section 3. 5-7-103. Licenses - fees - eligibility. (1) Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained in the office of the commissioner and filed therein. Upon approval of the application and receipt of the license fee of \$10 by the commissioner, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more enumerated principals. Each license shall expire on December 31 of each even-numbered year or may be terminated at the request of the lobbyist.

(2) No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 day of the date of the filing of the application.

(3) The fines and license fees collected under this chapter shall be deposited in the state treasury.

5-7-104. Repealed.

Section 4. 5-7-105. Suspension of lobbying privileges. No lobbyist whose license has been suspended and no person who has been adjudged guilty of a violation of any provision of this chapter may engage in lobbying for hire until that person has been reinstated to the practice and duly licensed.

Part 2

Registration and Reports

Section 5. 5-7-201. Docket - contents. The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of his/her principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal shall also indicate the principal's required reports of payments to influence official action by a public official.

Section 6. 5-7-202. Docket - public record. Such docket shall be a public record and open to the inspection of any individual upon demand at any time during the regular business hours of the office of the commissioner.

5-7-203. Principal - name of lobbyist on docket. Except as provided in 5-7-304*, every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

5-7-204. Updating docket. Any principal employing any lobbyist shall, when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided in 5-7-201.

5-7-205. Repealed.

5-7-206. Repealed.

Section 7. 5-7-207. Report to legislature. Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the commissioner shall from his/her records report to each member of each house of the legislature the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists and the subjects of legislation in which each principal is interested.

Part 3

Prohibitions - Applicability

Section 8. 5-7-301. Prohibition of practice without license and registration. (1) No individual may practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters he/she is promoting or opposing.

(2) No principal may directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is duly licensed and the names of the lobbyist and the principal are duly entered on the docket.

*repealed by Section 20. Should refer to New Section 14.

Section 9. 5-7-302. Prohibited compensation. No person may be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending official action by a public official or upon any other contingency connected with such action.

5-7-303. Repealed.

5-7-304. Repealed.

5-7-305. Penalty. Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding \$200, or both.

NEW SECTION Section 10. Ethical conduct. No lobbyist or principal shall engage in, or directly or indirectly authorize, any unprofessional conduct.

NEW SECTION Section 11. Principals to file accountings. (1) A principal subject to this chapter shall file with the commissioner an accounting of payments made to influence the official action of a public official.

(2) If such payments are made solely to influence legislative action, such accounting shall be made:

(a) before February 16th of any year the legislature is in session and shall include all payments made in that calendar year prior to February 1st;

(b) before the 16th day of the calendar month following any calendar month in which the principal spent \$5,000 or more and shall include all payments made during the prior calendar month; and

(c) within 60 days following adjournment of such session and shall include all payments made during such session, except as has previously been reported.

(3) If such payments are made to influence any other official action by a public official or made to influence such other action and legislative action, such accounting shall be made:

(a) before February 16th of the calendar year following such payments and shall include all payments made during the prior calendar year; and

(b) before the 16th day of the calendar month following any calendar month in which the principal spent \$5,000 or more and shall include all payments made during the prior calendar month.

(4) If no such payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating such.

(5) Each accounting filed under this section shall:

(a) list all payments for lobbying in each of the following categories:

(i) original and derivative research (for which the cost may be estimated if necessary) done to support a lobbying argument or presentation;

(ii) publication and distribution of each publication, except that the cost of a newsletter or leaflet distributed to the membership of a principal need not be reported unless over one-half of that newsletter or leaflet is devoted to lobbying matters;

(iii) other printing;

(iv) news media;

(v) advertising, including production costs;

(vi) postage;

(vii) travel and personal living expenses;

(viii) salaries and fees, including allowances, rewards, and contingency fees;

(ix) entertainment, including all foods and refreshments;

(x) telephone and telegraph; and

(xi) other office expenses.

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$10 or more benefit to any public official;

and

(ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended.

(c) list each contribution and membership fee which amounts to \$250 or more when aggregated over the period of one calendar year paid to the principal, regardless of whether it was paid solely for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which such payment was earmarked;

(d) list each political contribution, including anything of value, paid to any candidate for elective public office, to any committee established to support or oppose a candidate for elective public office, or to any committee to support or oppose any initiative, referendum, or other ballot issue, whether such payment is made directly or indirectly by the principal or any lobbyist who received compensation or reimbursement for such payment from the principal;

(e) list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against such action; and

(f) be kept by the commissioner for a period of ten years.

NEW SECTION Section 12. Principals required to report - penalty for failure to report or for false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report is subject to the penalty provided in 5-7-305 as well as any civil action provided for in this chapter. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

NEW SECTION Section 13. Reimbursement. Whenever a lobbyist invites a public official to attend a function which the lobbyist or his/her principal have fully or partially funded or sponsored, or whenever a lobbyist offers a public official a gift, the lobbyist must, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. Such expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactor."

NEW SECTION Section 14. Governmental reporting. Budget preparation or response to requests of a house or committee of the legislature by any governmental entity shall not be considered lobbying payments for the purposes of this chapter.

NEW SECTION Section 15. Audit of final accounting statements. The commissioner shall examine and may audit the accountings filed under [Section 11] and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of seven years from the date of filing all records supporting the accountings filed under [Section 11]. All such records shall be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and such attorneys are given the power to subpoena and compel attendance; issue enforceable civil investigative demands; take evidence; and require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter.

NEW SECTION Section 18. Civil penalties and enforcement. (1) Any person who violates any of the provisions of this chapter shall be subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the District court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter shall have his/her license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this act is additionally subject to recall under Montana Recall

Act, §2-16-601, MCA, et seq. and such violation shall constitute an additional basis for recall to those mentioned in §2-16-603(3), MCA.

(2) The attorney general, commissioner, or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(3) If a prosecution is undertaken by the commissioner or any county attorney, all costs associated with the prosecution shall be paid by the state of Montana.

(4)(a) Any individual who has notified the commissioner, the attorney general and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may himself/herself bring in the name of the state an action (hereinafter referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general and the appropriate county attorney have failed to commence an action hereunder within 40 days after such notice; and

(ii) said attorneys then fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification shall toll the statute of limitations applicable until the expiration of the waiting period;

(c) If the individual who brings the citizen's action prevails, he/she shall be entitled to be reimbursed by the state of Montana for costs and attorney's fees incurred. Provided that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) No civil action may be brought under this section more than seven years after the occurrence of the facts which give rise to the action.

(6) All civil penalties imposed pursuant to this section shall be deposited in the state general fund.

(7) A hearing under this chapter shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible but at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(8) If the court finds for the plaintiff, judgement shall be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgement with the commissioner.

NEW SECTION Section 22. Effective date. This act shall be effective upon passage and approval by the voters of the state of Montana.

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